NOTES OF CASES.

Blasphemy—What Constitutes Offense Under Maine Statute.—In State *v.* Mockus, 113 Atl. 39, the Supreme Judicial Court of Maine held that the offense of blasphemy under Rev. St. c. 126, sec. 30, may be committed either by using profanely insolent and reproachful language against God, or by contumaciously reproaching Him, His creation, government, final judgment of the world, Jesus Christ, the Holy Ghost, or the Holy Scriptures as contained in the canonical books of the Old and New Testament, or by exposing any of these enumerated Beings or Scriptures to contempt and ridicule, and it is not necessary for the state to prove the doing of all of them.

The court said in part: "It is farthest from our thought to claim superiority for any religious sect, society, or denomination, or even to admit that there exists any distinct, avowed connection between church and state in these United States or in any individual State; but, as distinguished from the religions of Confucius, Gautama, Mohammed, or even Abram, it may be truly said that, by reason of the number, influence, and station of its devotees within our territorial boundaries, the religion of Christ is the prevailing religion of this country and of this State. With equal truth may it be said that, from the dawn of civilization, the religion of a country is a most important factor in determining its form of government, and that stability of government in no small measure depends upon the reverence and respect which a nation maintains towards its prevalent religion. Within the limits of an opinion it would not be expected that all the tenets of the Christian religion could be expounded, or even enumerated, but for our purpose it will be enough to say that this religion teaches acknowledgment of the existence, presence, knowledge, and power of God, as related to human beings in all their walks of life; this religion teaches dependence upon God, this religion teaches reverence toward God and respect for Holy Scripture. Even as we are writing these words the man who is about to assume the duties of the high and responsible station of President of these United States, following the unbroken custom of more than a century, and to the end that his official vow may be more impressive and binding, reverently says, 'So help me God,' and then pausing, with equal reverence, salutes the Holy Scripture by a kiss. Congress and State legislatures open their sessions with prayer addressed to the God of the Christian religion. Judicial tribunals, anxious to discover and apply the truth, the whole truth, and nothing but the truth, require those who are to give testimony in courts of justice to be sworn by an oath which recognizes Deity. Thus it will be seen that there is acknowledgment of God in each co-ordinate branch of government. Lest any argument in support of the recognition of God in the fundamental law of our State should be overlooked, we point to the very preamble of our Constitution:

" 'We the people of Maine, in order to establish justice, insure tranquillity, provide for our mutual defense, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity so favorable to the design; and imploring His aid and direction in its accomplishment do ordain and establish the following Constitution.'

"In view of all these things, shall we say that any word or deed which would expose the God of the Christian religion, or the Holy Scriptures, 'to contempt and ridicule,' or which would rob official oaths of any of their sanctity, thus undermining the foundations of their binding force, would be protected by a constitutional religious freedom whose constitutional limitation is nondisturbance of the public peace? We register a most emphatic negative. In support of this position we quote from Tiedeman on State and Federal Control of Persons and Property, sec. 65:

" 'Public contumely and ridicule of a prevalent religion not only offends against the sensibilities of the believers, but likewise threatens the public peace and order by diminishing the power of moral precepts.'

"In State *v.* Chandler, 2 Har. (Del.) 553, an indictment for blasphemy, the court sustains the doctrine that it was not necessary that an actual breach of the peace should occur, but the use of words tending to excite or incite a breach of the peace is indictable. In Updegraph *v.* Commonwealth, 11 Serg. & R. (Pa.) 394, upon an indictment for blasphemy, the court said in words most applicable to the case at bar:

" 'From the tenor of the words, it is impossible to say that they could have been spoken seriously and conscientiously, in the discussion of a religious or theological topic; there is nothing of argument in the language; it was the outpouring of an invective so vulgarly shocking and insulting that the lowest grade of civil authority ought not to be subject to it, but when spoken in a Christian land, and to a Christian audience, it is the highest offense contra bonos mores; and, even if Christianity was not part of the law of the land, it is the popular religion of the country, an insult on which would be indictable, as directly tending to disturb the peace.' "

Thus it will be easily seen that in cases like the one at bar the law reaches down through the surface of things to the concealed or dimly concealed depths of intent. The presiding justice gave the true rule when he said:

" 'The clear boundary line between the lawful and the unlawful discussion of religious subjects is the intent with which such discussion is carried on, and with which the words were uttered. If uttered maliciously with an unlawful intent to ridicule and bring into contempt, as it stated in the statute, "His creation, government, final

judgment of the world, Jesus Christ, the Holy Ghost and the Holy Scriptures," then they are punishable. The gist of the offense is the unlawful intent with which the words are uttered. Were they uttered with an unlawful intent to bring these holy subjects into ridicule and contempt? If they were, then the person who uttered them is amenable to this statute.' See Commonwealth *v.* Kneeland, 20 Pick (Mass.) 220. * * *

"In respect to state inhibition, the respondent relies upon article 1, secs. 3 and 4, of our state Constitution, and in respect to the federal Constitution he relies upon article 1 of the Amendments to the same. Our Declaration of Rights. adopted 100 years ago, is the same as that found in the Massachusetts Constitution, with respect to religious freedom, and almost immediately after the adoption of our Constitution our Legislature enacted the statute against blasphemy which was copied from the Massachusetts statute against blasphemy, with unimportant modifications. The colonial government of Massachusetts in 1646, and the provincial government in 1697, made similar provisions defining and punishing blasphemy. The Massachusetts statute, passed soon after the adoption of the Massachusetts Constitution, was a revision of the colonial and provincial laws. In the Massachusetts constitutional convention of 1920, called to revise the existing Constitution, the subject of religious freedom was freely discussed, but, so far as we can learn, no one in that convention even suggested that the existing statute against blasphemy passed in 1782, was in violation of the constitutional Declaration of Rights.

"In 1838 the Massachusetts court said in Commonwealth *v.* Kneeland, supra, that it was somewhat late to call in question the constitutionality of a law of such long standing and which had been repeatedly enforced without doubt as to its constitutionality. We think this view has strong and pertinent application to the case at bar when we consider that during the entire century in which our court has existed no instance can be found in which the constitutionality of our statute against blasphemy has been questioned. But, waiving the doctrines of antiquity and stare decisis for a moment, the reasoning of the court in the Kneeland Case is so satisfactory that we crave indulgence while we quote somewhat at length from the words of the learned Chief Justice Shaw:

" 'In order to ascertain whether the statute against blasphemy is contrary to the letter or to the spirit of this constitutional article, it is necessary to ascertain what the statute in fact prohibits, and then see whether the act thus prohibited is one which the article allows. * * * It makes it penal wilfully to blaspheme the holy name of God, etc. The word "wilfully," in the ordinary sense in which it is used in statutes, means not merely "voluntarily," but with a bad purpose, and in this statute must be construed to imply an intended design to calumniate and disparage the Supreme Being, and to destroy the

veneration due to him. It does not prohibit the fullest inquiry and the freest discussion for all honest and fair purposes, one of which is the discovery of truth. It admits the freest inquiry, when the real purpose is the discovery of truth, to whatever result such inquiries may lead. It does not prevent the simple and sincere avowal of a disbelief in the existence and attributes of a supreme, intelligent Being, upon suitable and proper occasions. And many such occasions may exist; as where a man is called as a witness, in a court of justice, and questioned upon his belief, he is not only permitted, but bound, by every consideration of moral honesty, to avow his unbelief, if it exist. He may do it inadvertently in the heat of debate, or he may avow it confidentially to a friend, in the hope of gaining new light on the subject, even perhaps whilst he regrets his unbelief; or he may announce his doubts publicly, with the honest purpose of eliciting a more general and thorough inquiry, by public discussion, the true and honest purpose being the discovery and diffusion of truth. None of these constitute the wilful blasphemy prohibited by this statute.'

"Taking this to be the true meaning, intent, and construction of the statute, the court declared that it was not repugnant to the constitutional Declaration of Rights, and further declared:

" 'That the article is to be expounded with reference to every other clause and provision of the Constitution, and to its whole spirit and character as a system of government, to be gathered from all its constituent parts, and from the existing laws, the known prevailing principles, and other circumstances of the times in which it was made and adopted.'

"Adopting this conclusion because it is based upon sound principles and supported by convincing logic, we have no hesitation in saying that the statute under consideration in no manner conflicts with our state constitutional guaranty of religious freedom and freedom of speech. The constitutional guaranties found in article 1 of the Amendments to the federal Constitution have no application to the constitutionality of our statute here being considered; for it is there provided only that Congress shall make no law restraining religious freedom or freedom of speech. Congress did not enact this statute. The federal Declaration of Rights not only restrains Congress from enacting any statute restraining religious freedom or freedom of speech, but, by necessary implication, leaves those matters to be dealt with by the sovereign power of the several states. These exceptions are unavailing to the respondent. United States *v.* Cruikshank, 92 U. S. 551, 23 L. Ed. 589."

Intoxicating Liquors—Evidence Obtained by Unlawful Search.—In Dukes *v.* United States, 275 Fed. 142, the Circuit Court of Appeals, Fourth Circuit, held that where a sheriff and his deputy, with-